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Via ECF

KERRY S. CULPEPPER *

* ADMITTED TO PRACTICE IN VIRGINIA, HAWAII
AND BEFORE THE USPTO

October 2, 2023

U.S. Magistrate Judge Dustin M. Howell
501 West 5th Street, Suite 4190
Austin, TX 78701

Re: *AFTER II MOVIE, LLC, ET AL. v. GRANDE COMMUNICATIONS NETWORKS, LLC*,
1:21-cv-00709-RP, Letter brief on Plaintiffs' proposed amended schedule

Dear Judge Howell,

I am counsel for Plaintiffs. I am writing pursuant to your instructions of the Sept. 25, 2023 hearing to provide a 3 page letter brief if the Parties are unable to agree to a proposed revised scheduling order. Plaintiffs proposed second amended scheduling order prepared with the goal of preserving the April 15, 2024 trial date is attached as Exhibits "A" (marked-up) and "B" (clean)¹.

During the hearing, Your Honor stated that the Court would grant Defendant's motion and extend fact discovery by 60 days but asked the Parties to meet and confer on the expert report deadlines. Plaintiffs propose moving these deadlines by about 60 days but preserving the April

¹ Plaintiffs submit this proposed order in compliance with the Court's verbal instructions while maintaining their objection to Defendant's motion to amend the scheduling order and without waiving their right to file objections to the order.

15, 2024 trial date. Because of the prejudice to Plaintiffs by Defendant being allowed 3 months more than Plaintiffs to prepare its principal expert report, Plaintiffs propose that they be allowed to file a supplemental expert report on Feb. 2, 2023. Plaintiffs have also made other proposed changes all toward the goal of preserving the April 15, 2024 trial date as explained below.

1. Clarification of the ADR requirement and order to exchange offers.

Plaintiffs propose that the Parties be ordered to complete ADR by Jan. 19, 2023 unless Defendant states in writing that it is unwilling to make a settlement offer. To that end, Plaintiffs propose that the Parties be required to exchange written offers on Oct. 13 and Oct. 27. Plaintiffs' counsel made good faith offers to Defendant's counsel verbally on Aug. 30, 2021 and in writing on Dec. 5, 2022 but Defendant did not even respond to either offer. If Defendant does not wish to make a good faith offer, the Parties should be relieved of the ADR obligation to eliminate one more obstacle from preserving the April 15, 2024 trial date.

2. Summary judgment motions limited to one per side

To preserve the April 15, 2024 trial date, Plaintiffs propose that each side be limited to (1) one summary judgment motion since the proposed fact discovery cut-off will be closer to the April trial date.

3. Response to Defendant's proposal

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Defendant's proposed amended scheduling order reveals exactly what Plaintiffs argued in their opposition to the motion. Defendant wants to file late expert rebuttal briefs to Plaintiffs' Aug. 7 expert reports. But Defendant is already being granted 3 months more than Plaintiffs had to serve its principal expert reports. It would be manifestly unjust for the Court to give Defendant an additional 60 days on top of the 45 it already had to serve rebuttals to Plaintiffs' expert reports properly served on Aug. 7 in line with the outstanding scheduling order while Plaintiffs only get 45 days. Should the Court be inclined to adopt Defendant's proposal, Plaintiffs request that it make clear that Defendant's time to submit rebuttals to Plaintiffs' expert reports has expired.

4. Conclusion

Your Honor denied Plaintiffs' motion for leave to file a third amended complaint in part based upon concern that the April 15, 2024 trial date would have to be moved by more than a year. *See* Order [Doc. #139] at pp. 9-10. Consistent with that reasoning, Plaintiffs submit a proposed amended schedule that maintains the trial date.

Sincerely,

/s/ksc/

Kerry S. Culpepper

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Counsel for Plaintiffs

Attachments: Exhibits A and B

CERTIFICATE OF SERVICE

I hereby certify that on Oct. 2, 2023, I caused a copy of the foregoing to be served upon all counsel of record via ECF notification.

By: /s/ Kerry S. Culpepper